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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

VICTOR D. QUILICI,

Petitioner,

vs.

SECOND AMENDMENT FOUNDATION, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT *

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QUESTIONS PRESENTED

I. Whether the United States Court of Appeals for the Seventh Circuit decided a substantial federal question that is of vital public interest to every citizen.

II. Whether the United States Court of Appeals for the Seventh Circuit's decision errodes the basic concept of the essential dignity and worth of individuals, which includes the protection of private personality, an action which conflicts with the applicable decisions of the United States Supreme Court in cases such as *Rosenblatt v. Baer*, 383 U.S. 75, 92, 86 S.Ct. 666, 679, and *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 3012.

III. Whether the United States Court of Appeals for the Seventh Circuit departed from accepted and usual judicial practice in reaching its decision without addressing one of Petitioner's main arguments regarding Respondent's failure to meet the initial burden of establishing conclusively the absence of any genuine issue of material fact in order to prevail on a Rule 12(b)(6) motion for summary judgment, thereby contravening this Court's analysis in cases such as *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594.

PARTIES AFFECTED

Appellant-Plaintiff Below:

Victor D. Quilici

Appellees-Defendants Below:

Second Amendment Foundation, d/b/a The Weekly Bullet, Alan M. Gottlieb, Gregory McDonald, John D. Lewis, Jr., individually and as agents of the Second Amendment Foundation.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1985

VICTOR D. QUILICI,

Petitioner,

vs

SECOND AMENDMENT FOUNDATION, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Your Petitioner, Victor D. Quilici, respectfully prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the above case.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Seventh Circuit, that is reported at 769 F.2d 414, is attached as Appendix A. The decision of the United States District Court for the Northern District of Illinois, Eastern Division, (Case No. 83 C 1751), is an unreported case and is attached as Appendix B.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on July 30, 1985, a copy of which is attached as Appendix A. An order was entered on September 9, 1985, denying the Petitioner's

motion for rehearing, a copy of which is attached as Appendix C. This Court has jurisdiction under Title 28, Section 1254, United States Code.

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

STATEMENT OF THE CASE

The Petitioner, Victor D. Quilici, is an attorney and resident of Morton Grove, Illinois. He filed the first of several lawsuits challenging Morton Grove's handgun law on the day following its passage. Within several months thereafter, two additional suits were filed (one backed by the National Rifle Association and the other by Respondent, Second Amendment Foundation), and the three suits were consolidated. On May 28, 1982, a three-judge panel of the United States Court of Appeals for the Seventh Circuit heard oral argument. Quilici participated in the oral argument as did counsel representing the suit backed by the Respondent herein, Second Amendment Foundation. During oral argument,

Respondent, Second Amendment Foundation's attorney, Don B. Kates, Jr., was questioned extensively by the tribunal, his argument having been interrupted twenty-one times. Quilici and an attorney representing the NRA, Donald Moran, were each queried two or three times by the judges. A tape recording of the hearing, preserved by order of court and since transcribed, was available to all parties immediately after the hearing.

The official recording of the hearing substantiates that Quilici's argument time totaled approximately ten and one-half minutes (including, by agreement, introduction of all participating counsel), while Respondents' counsel took approximately eleven minutes and forty-five seconds (a court reporter's affidavit was made part of the record).

Subsequently, on June 7, 1982, *The Weekly Bullet* (Respondent's publication), printed a story under the caption "Morton Grove Appeal Heard in Chicago" wherein most of the libelous statements occurred. Although pre-trial conference records substantiate Respondents' failure to be present when time for argument was allocated, and only Petitioner and the NRA attorney met in Chicago to outline oral argument guidelines, the libelous article states Petitioner Quilici failed to cooperate with other counsel and that he took more time than allocated to him, allegedly impugning his want of integrity and attacking his capabilities as an attorney, in general, by attributing inability to properly conduct oral argument and, in effect, having "sunk [the] appeal".

A subsequent article proffered as a retraction (dated June 21, 1982), attributed Petitioner's presentation (referring to the libelous matter in the first article), to the purported extensive questioning by the three-judge panel. Petitioner alleged this was also untrue since the continued interruptions were made during the delivery of Don B. Kates, Jr.'s argument (Respondent, Second Amendment Foundation's attorney). The two articles, reproduced in their entirety, were part of the record before the court.

Petitioner filed suit in the United States District Court for the Northern District of Illinois. The District Court, on June 28, 1984, entered summary judgment in favor of the Respondents and against the Petitioner. It ruled

that the articles did not constitute libel *per se* because the first article amounted only to a criticism of the Petitioner's performance on one occasion, and because the second article could not be described as an attack on the Petitioner at all.

The United States Court of Appeals for the Seventh Circuit, on July 30, 1985, affirmed the decision of the District Court. It held that when the articles are construed in light of the "innocent construction" rule, they are not "so obviously and naturally harmful" as to constitute libel *per se*. On September 9, 1985, the Seventh Circuit denied Petitioner's petition for rehearing.

Your Petitioner now asks for a Writ of Certiorari.

REASONS FOR ISSUING THE WRIT

I THE SEVENTH CIRCUIT DECIDED A SUBSTANTIAL FEDERAL QUESTION THAT IS OF VITAL PUBLIC INTEREST TO EVERY CITIZEN

The Seventh Circuit decided that the innocent construction rule regarding purported libelous statements may be applied when a statement can be read reasonably as a criticism of a plaintiff's performance on a particular occasion or in a particular instance. The court decided that the alleged libelous statements in issue were not so injurious as to be libelous *per se*, rejecting the Petitioner's (a licensed Illinois attorney) argument that the articles in question were not

mere criticism, and were libelous *per se* in that the language amounted to a general attack on the Petitioner's character.

The question of interest and the vital importance of the issues presented has been exemplified by the extensive press coverage, including legal publications. The Chicago Daily Law Bulletin, the only Chicago daily law newspaper and the major legal publication in Illinois, published four articles covering the litigation, two of which were front page stories. The outcome of this decision was also published in the National Law Journal, and local newspapers covered the litigation at various stages from filing of the suit through its appeal from the U.S. District Court decision.

The Chicago Tribune article of July 17, 1984, in its section "On The Law" is significant both

for its erroneous interpretation of the District Court's ruling and for postulating the erroneous assumption that the First Amendment allows publishers and broadcasters to enjoy an unconditional and indefeasible immunity from liability for defamation. The article was cited in its entirety to the court below in one of Petitioner's briefs and included the interesting introductory language that the "federal court ruling . . . should give all of us pointers on how to tar the hide off an attorney or other professional types in print."

The decision of the Seventh Circuit Court of Appeals then, considering its impact on the legal profession and media people in particular — both obliged to champion truth and justice — is of vital importance to every citizen. The case involves fundamental rights arising under the

federal constitution and the questions presented, therefore, are of "substance"; they are not merely "eposodic" or "academic." *See Rice v. Sioux City Memorial Park Cemetary*, 349 U.S. 70 (1955).

II THE SEVENTH CIRCUIT'S DECISION ERRODES THE BASIC CONCEPT OF THE ESSENTIAL DIGNITY AND WORTH OF INDIVIDUALS, WHICH INCLUDES THE PROTECTION OF PRIVATE PERSONALITY, IN CONTRAVENTION OF THIS COURT'S ANALYSIS IN CASES SUCH AS *ROSENBLATT V. BAER*, 383 U.S. 75, 92, 86 S.CT. 666, 679, AND *GERTZ V. ROBERT WELCH, INC.*, 418 U.S. 323, 94 S.CT. 2997, 3012.

As this Court noted in *Rosenblatt v. Baer*, the individual's right to the protection of his own good name . . .

> reflects no more than our basic concept of the essential dignity and worth of every human being — a concept at the root of any decent system of ordered liberty. The protection of private personality, like the protection of life itself, is left primarily to the individual States under the Ninth and Tenth Amendments. But this does not mean that the right is entitled to any less recognition by this Court as a basic of our constitutional system. *Rosenblatt v. Baer*, 383 U.S. 75, 92, 86 S.Ct. 666, 679, 15 L.Ed 2d 597 (1966).

The Seventh Circuit's affirmation of the District Court's reliance on pre-*Chapski*[1] case law supports the proposition that when allegedly libelous statements can be construed as a criticism of an individual in a particular instance or occasion they will be given an innocent construction. These cases also enunciate the constitu-

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1/ *Chapski v. Copley Press*, 92 Ill.2d 344, 42 N.E.2d 195 (1982).

tional privileges of free speech and critical inquiry (App. A, Decision, p. 9). In *Gertz* v. *Robert Welch, Inc.*, 94 S.Ct. 2997, 3012, this Court has narrowed its application to members of the legal profession thusly:

> Although the legal profession, as many other vocations, may be open to critical inquiry, an individual attorney is not — by reason of his or her position as an "officer of the court" — a "public official" and is accorded the same protection as any other individual for the harm inflicted by defamatory falsehood.

Although Petitioner was not found to be a public official or a public figure, and should have been accorded the same protection as any other individual within the *Gertz* guidelines, the court below (App. A, decision, p. 8), places the same aura of notoriety over attorneys engaged in appellate work in concluding, *ad hoc*, that the

news media "criticisms are more in the nature of opinions on performance rather than statements of fact."

In noting that freedom of speech encompasses the right of the press and others to express their opinions on any matter or event, and that "[w]hile false statements of fact receive no constitutional protection, the expression of an opinion can never be false so as to constitute a false statement of fact," the court below recites general principles in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997. But far from following the holding of *Gertz* that *ad hoc* resolution of the competing interests at stake in each particular case is not feasible, and that rules of general application must be followed, the Seventh Circuit Court

adopted a hybrid approach in its evaluation of the balance of interests between the needs of the p[illegible] and an attorney's claim to compensation for wrongful injury.

Although the Petitioner's complaint below alleged that false statements were published by the Respondents and were made with actual malice —— the false publication was uncontroverted as noted by the court (App. A, decision, p. 6), the court not only incorrectly applied an innocent construction rule as modified by the Illinois Supreme Court in *Chapski* v. *Copely Press*, 92 Ill.2d 344, 442 N.E.2d 195, but, in so doing, acted contrary to this Court's admonishment against *ad hoc* determinations in *Gertz* when it found the language to be mere criticisms in the nature of opinions on performance rather

than statements of fact (App. A, decision, p. 8).

The Seventh Circuit while recognizing that Respondents made false statements of fact (App. A, decision, p. 6), ignored the "context" and "surrounding circumstances" dictates of *Chapski v. Copely Press*, 92 Ill.2d 344, 442 N.E.2d 195, which it cites as leading authority for the innocent construction rule, in finding the uncontroverted false statement did not impugn plaintiff's integrity or impute to him an inability to perform the responsibilities of an attorney.

Although it was clear from the record that the Respondent publisher acted with a high degree of falsity when it published the statement, and the complaint labeled it a false statement of fact, the court below, whenever

referring to the statement, inexplicably calls it a "misstatement of fact" (App. A, decision, p.p. 5, 12).

While the Court below states that its decision rests only alternatively, and not solely, on the particular instance/general attack distinction which remains unclear in Illinois (App. A, decision, footnote #2, p.p. 9-11), there is no other theory stated in support thereof.

As further noted in Petitioner's arguments, *infra*, the court below further erred in affirming the District Court's summary judgment for Respondents whereby Petitioner was precluded from proving actual malice on the part of Respondents and the falsity of the statements — all of which were genuine issues of material fact which could be proved in support of the claim below.

III THE SEVENTH CIRCUIT IN REACHING ITS DECISION DID NOT ADDRESS ONE OF THE PETITIONER'S MAIN ARGUMENTS REGARDING RESPONDENTS' FAILURE TO MEET THE INITIAL BURDEN OF ESTABLISHING CONCLUSIVELY THE ABSENCE OF ANY GENUINE ISSUE OF MATERIAL FACT IN ORDER TO PREVAIL ON A RULE 12(b)(6) MOTION FOR SUMMARY JUDGMENT, THEREBY CONTRAVENING THIS COURT'S ANALYSIS IN CASES SUCH AS *HAINES V. KERNER*, 404 U.S. 519, 92 S.CT. 594.

In *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, this Court held that the motion for summary judgment will not be granted unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim. *See also Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99.

The Seventh Circuit overlooked evidence in the record showing that the District Court's

determination of Respondents' right to judgment as a matter of law was devoid of any finding of the absence of any genuine issue of material fact. The record before the appellate court clearly showed there were no supporting affidavits or other materials presented on behalf of the Respondents. To the contrary, the complaint set forth with specificity the defamatory statements, alleging they were false, or with disregard of the truth, and that the language imputed to the Petitioner a want of the requisite qualifications to practice law or, in the alternative, charged him with improper practices in the performance of his duties as an attorney.

A court reporter's affidavit clearly showed that Petitioner did not use more time than allocated to him; that he did not take up the collec-

tive plaintiffs' rebuttal time, and the court below found that Respondents admitted the allegations concerning length of oral arguments were false (App. A, decision, p. 6).

In addition to the Respondents' admission of well-pleaded facts before the District Court when summary judgment was entered in favor of Respondents, the court had before it the uncontroverted statements of fact that the Respondent publisher acted with a high degree of awareness of probable falsity in that it had access to and knew of the official court transcript, including timing of the tape recording of oral arguments, before it published the first article alleging Petitioner, in effect, "stole" argument time. As to the second article, falsely attributing to plaintiff the failure to maintain

cohesiveness of oral argument because of extensive questioning by the tribunal, the Repondent knew or should have known, from the official court recording of proceedings, said statements were false because the extensive questioning was directed to its own counsel and not to Petitioner.

Not only did Respondent fail to meet the intial burden of establishing conclusively the absence of any genuine issue of material fact, but it was clear from the record that material facts were before the District Court which could be proved in support of the claim upon which relief could be granted.

Notwithstanding all of the foregoing, the trial court's erroneous entry of summary judgment in favor of Respondents was upheld by

the Seventh Circuit, thereby demonstrating a clear departure from accepted and usual practice in reaching that decision. *See* Moore, J., Moore's *Federal Practice*, par. 12(b)(6), p.p. 433, 434, citing *Cruz v. Beto*, 405 U.S. 319, 92 S.Ct. 1079, and *Walker Process Equipment v. Food Machine & Chemical Corp.*, 382 U.S. 172, 86 S.Ct. 347.

CONCLUSION

For the foregoing reasons, the Petitioner, Victor D. Quilici, respectfully prays that this Honorable Court issue a writ of certiorari to review the judgment and order of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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Dated at Chicago, Illinois,
December 4, 1985

APPENDICES

APPENDIX A

In the

United States Court of Appeals

For the Seventh Circuit

No. 84-2255

VICTOR D. QUILICI,

Plaintiff-Appellant,

vs.

SECOND AMENDMENT FOUNDATION, et al.,

Defendant-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division—No. 83 C 1751—**James B. Moran**, *Judge.*

ARGUED APRIL 26, 1985—DECIDED JULY 30, 1985

Before ESCHBACH, FLAUM, *Circuit Judges*, and GIBSON, *Senior Circuit Judge.**

GIBSON, *Senior Circuit Judge*. The plaintiff, Victor D. Quilici, appeals from the district court's grant of summary judgment upon the defendants', collectively referred to as the Second Amendment Foundation, motion to dismiss under *Fed. R. Civ. P.* 12(b)(6). We affirm.

I.

The plaintiff was one of three attorneys who delivered oral arguments before this court on appeal of a district court decision upholding the constitutionality of a hand-

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* The Honorable Floyd R. Gibson, Senior Circuit Judge, United States Court of Appeals for the Eighth Circuit, is sitting by designation.

gun ban passed by the Village of Morton Grove. *See generally Quilici v. Village of Morton Grove*, 532 F. Supp. 1169 (N.D. Ill. 1981), *aff'd*, 695 F.2d 261 (7th Cir. 1982) (Coffey, J., dissenting), *cert. denied*, 104 S. Ct. 194 (1983). The defendants publish a newsletter, "The Weekly Bullet." In its June 7, 1982, issue, The Weekly Bullet commented on the oral argument in the handgun ban case before this court. The June 7th article, in pertinent part, with emphasis added, is as follows:

MORTON GROVE APPEAL HEARD IN CHICAGO

On Friday, May 28, a three-judge panel of the U.S. Court of Appeals: Seventh Circuit, heard the oral arguments of the pro-gun appeal to Judge Decker's onerous decision which upheld the Morton Grove handgun ban. Decker's decision had been handed down last December. Pro-gun attorney Victor Quilici, the Second Amendment Foundation and the National Rifle Association all filed appeals to overturn it in March.

The oral arguments were heard Friday morning in Chicago at the Federal Building. Second Amendment Foundation attorney Don B. Kates, Jr., noted criminologist and pro-gun scholar, and NRA attorney Dan Moran of the Chicago law firm Peterson and Houpt, made presentations to the judges on behalf of the individual plaintiffs supported by their respective organizations. Quilici represented himself. . . .

Unfortunately, the presentation by the pro-gun side was beset with problems, leading one observer to remark that the appeal may be seriously jeopardized by the manner in which the oral arguments were made.

Greg McDonald, SAF executive director, attended the hearings in Chicago and agreed with the assessment. McDonald said, "I was pleased by the way in which our attorneys and the NRA attorneys cooper-

ated. *But quite frankly, I felt that the presentation made by Victor Quilici was poor. It may have sunk our appeal.*"

Because three cases were filed challenging the Morton Grove ordinance by three separate parties, the federal court consolidated the cases into one. This has meant that three groups of attorneys have had to work together in the preparation of briefs and oral presentations. So far this working relationship has fared well, despite some strains.

However, apparently *Quilici was very uncooperative during the preparation of the oral presentations for the appeal.* The pro-gun side was given thirty minutes by the Court to present the appeal. The NRA and SAF attorneys had worked to divide the responsibilities for presentation of the arguments. Quilici was supposed to have gone first, presenting several arguments relating to the Illinois Constitution and using no more than 6 minutes. The NRA was to follow, presenting additional Illinois constitutional arguments and then present arguments to the Court asking it to abstain until the Illinois State Supreme Court issued a ruling. The NRA was to have taken about 5 minutes.

Finally, SAF attorney Don Kates was to present a 4 to 5 minute argument explaining that the Second Amendment to the U.S. Constitution prohibited Morton Grove-type gun bans.

Unfortunately, *Victor Quilici took 13 minutes to make his presentation, using up nearly half the total time allocated to the pro-gun side. Even worse, his presentation was rambling and often pointless.* The ultimate outcome was that the pro-gun side ran out of time in the middle of the Second Amendment presentation. Moreover, all time reserved for rebuttal to the Morton Grove response had been used up by Quilici. Despite that, the Court permitted NRA attorney Moran to make a one minute rebuttal to the anti-gun Morton Grove presentation.

The outcome may be known within a few weeks. But the disastrous problems caused by Quilici may have severely damaged chances for a favorable ruling.

In its June 21, 1982, issue, The Weekly Bullet published an article entitled, "In Defense of Mr. Quilici." The June 21st article, in its entirety, is as follows:

> It was mentioned in TWB (V7, R19) that pro-gun attorney Victor Quilici used more than the allocated time for presentation of his case during the recent Morton Grove appeals hearing in Chicago. TWB wishes to point out that Quilici was faced with a panel of judges continually interrupting his oral arguments with questions, and that in answering these, Quilici exceeded his time limit. In addition, constant interruptions during an oral presentation make it extremely difficult to maintain a cohesive and organized delivery, especially on such a complex subject.
>
> In no way should the earlier comments in TWB be considered as reflecting on Mr. Quilici's competence in the legal or any other field. SAF feels confident with Mr. Quilici and has contributed substantial financial support to him.
>
> SAF is well aware of all the hard work and long hours Quilici devoted to the Morton Grove case. Every gun owner in America owes him a debt of gratitude for his vigilance and determination in filing the first lawsuit against the infamous Morton Grove ban.

Following the publication of these articles, the plaintiff filed this action in federal court based on the court's diversity jurisdiction. 28 U.S.C. § 1332. In count one of his amended complaint, the plaintiff alleged that the June 7th article contained false, malicious, defamatory, and libelous statements about him. In the second count of the complaint, the plaintiff made the same allegations about the June 21st article. In both counts the plaintiff sought five million dollars in general and ten million dollars in punitive damages. The parties do not dispute that Illinois law controls this case. *See Klaxon Co. v. Stentor Elec. Mfg. Co., Inc.*, 313 U.S. 487, 496 (1941) (in diversity actions a

federal court is to apply the choice of laws rules of the forum state); *accord Pittway Corp. v. Lockheed Aircraft Corp.*, 641 F.2d 524, 526 (7th Cir. 1981) (applying Illinois' "most significant relationship" choice of laws test in a diversity action); *see also Ingersoll v. Klein*, 46 Ill.2d 42, ____, 262 N.E.2d 593, 596 (1970) (adopting the Restatement (Second) Conflict of Laws "most significant relationship" test); *Snead v. Forbes*, ____ Ill.App. ____, ____, 275 N.E.2d 746, 748-49 (1st Dist. 1971) (in multistate defamation cases the state with the most significant relationship to the case is usually the state in which the plaintiff resides).

II.

The plaintiff argues, first, that the trial court erred in granting the defendants' motion to dismiss because it was not clear that the plaintiff would be unable to prove a set of facts in support of his claim. In support of this contention, the plaintiff alleges that the June 7th article contained a misstatement of fact, i.e., that the plaintiff's oral argument took thirteen minutes. Apparently, the argument is that if the plaintiff does prove that this was a misstatement of fact, he will be entitled to recover. Also, plaintiff's complaint averred that the allegedly false statements published by the defendants "were made with knowledge that they were false or with reckless disregard of the truth, i.e., with malice." Because this allegation was a question of fact, the plaintiff argues, dismissal was inappropriate.

A complaint should not be dismissed on a Rule 12(b)(6) motion unless it appears beyond doubt that the plaintiff would be unable to prove a set of facts which would warrant relief. *Hishon v. King & Spalding*, ____ U.S. ____, ____, 104 S. Ct. 2229, 2233 (1984), *citing, Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Altman v. Hurst*, 734 F.2d 1240, 1242 n.2 (7th Cir. 1984), *cert. denied*, 105 S. Ct. 385 (1985). A motion to dismiss admits well pleaded

allegations, and the court reviews those allegations in the light most favorable to the plaintiff. *Richardson v. Dunbar*, 95 Ill.App.3d 254, ____, 419 N.E.2d 1205, 1207 (3d Dist. 1981) (quoting *Brooks v. Village of Wilmette*, 72 Ill.App.3d 753, 756, 391 N.E.2d 133, 135-36 (1st Dist. 1979)). For purposes of the motion, then, the defendants admitted that the June 7th article incorrectly stated the amount of time that the plaintiff had used during oral argument, and the plaintiff was not required to prove the inaccuracy of the statement.

We note also that the plaintiff does not aver that he suffered any special damages. Thus, his right to recover depends upon whether the statements in question were libelous *per se*. *Fried v. Jacobson*, 99 Ill.2d 24, ____, 457 N.E.2d 392, 394 (1983); *Meyer v. Allen*, 127 Ill.App.3d 163, ____, 468 N.E.2d 198, 199 (4th Dist. 1984); *Costello v. Capital Cities Media, Inc.*, 111 Ill.App.3d 1009, ____, 445 N.E.2d 13, 15 (5th Dist. 1982). Whether the articles constituted libel *per se* was a question of law, to be decided in the first instance by the trial court. *Pruitt v. Chow*, 742 F.2d 1104, 1107 (7th Cir. 1984) (quoting *Chapski v. Copley Press*, 92 Ill.2d 344, 352, 442 N.E.2d 195, 199 (1982)); *Fried*, 99 Ill.2d at ____, 457 N.E.2d at 395 (quoting *Chapski*, 92 Ill.2d at 352, 442 N.E.2d at 199); *Matchett v. Chicago Bar Ass'n.*, 125 Ill.App.3d 1004, ____, 467 N.E.2d 271, 276 (1st Dist. 1984), *cert. denied*, 105 S. Ct. 2115 (1985). The question of whether the articles were published with malice would not have to be reached unless the articles were libelous *per se*. *See Allen v. Ali*, 105 Ill.App.3d 887, ____, 435 N.E.2d 167, 169 (1st Dist. 1982); *Richardson*, 95 Ill.App.3d at ____, 419 N.E.2d at 1209. Thus, whether it was proper for the district court to grant the defendant's motion to dismiss hinges on the question of whether the court correctly determined that the articles were not libelous *per se*.

The district court held that the articles did not constitute libel *per se* because the June 7th article amounted only to a criticism of the plaintiff's performance on one occasion, and because the June 21st article could not be

described as an attack against the plaintiff at all. The plaintiff argues that this decision clearly was incorrect, because when the allegedly libelous statements are viewed in the context of both articles and the surrounding circumstances they amount to a general attack on his ability to perform the responsibilities of an attorney. The plaintiff argues also that the statements, again when read in the context of the articles and the surrounding circumstances, impugn his integrity. Thus, they are libelous *per se*. We disagree.

Of the four categories of words which may constitute libel *per se* under Illinois law, two serve as the basis for the complaint in this case: words which impute an inability to perform, or want of integrity in the discharge of duties of an office or employment; or words which prejudice a party in his or her profession or trade. *Brown & Williamson Tobacco Corp. v. Jacobson*, 713 F.2d 262, 286 (7th Cir. 1983) (quoting *American Pet Motels, Inc. v. Chicago Veterinary Medical Ass'n*, 106 Ill.App.3d 626, 629, 435 N.E.2d 1297, 1300 (1st Dist. 1982)); *Fried*, 99 Ill.2d at ____, 457 N.E.2d at 394; *Meyer*, 127 Ill.App.3d at ____, 468 N.E.2d at 199. However, as we have noted before, even a statement which fits within one of these categories is not necessarily libelous *per se*. Statements are libelous *per se* when they constitute a serious charge of incapacity or misconduct in words so obviously and naturally harmful that proof of their injurious character can be dispensed with. *Brown*, 713 F.2d at 268. *See also Fried*, 99 Ill.2d at ____, 457 N.E.2d at 394; *Matchett*, 125 Ill.App.3d at ____, 467 N.E.2d at 275; *Sloan v. Hatton*, 66 Ill.App.3d 41, ____, 383 N.E.2d 259, 260 (4th Dist. 1978).

The statements in the June 7th article about which the plaintiff complains may be summarized as follows: that the plaintiff's presentation before this court was poor, and may have "sunk" the appeal; that the plaintiff did not cooperate with the other attorneys arguing on his side of the handgun case; that the plaintiff used more time for oral argument than had been allocated to him and, as a result, used up all the rebuttal time; and that the plain-

tiff's presentation was "rambling and often pointless." The statement in the June 21st article about which the plaintiff complains is the one which attributed the length of the plaintiff's oral argument to interruptions from the bench.

Even without considering whether these statements are protected by the "innocent construction" rule, we are not able to say that the statements are "so obviously and naturally harmful" as to constitute libel *per se*. *Fried*, 99 Ill.2d at ____, 457 N.E.2d at 394. The statements, while uncomplimentary, are the type of criticisms to which every attorney who does appellate work is subjected. Oral arguments occur before appellate courts in an open forum. By accepting the responsibility of argument, attorneys must be willing to accept the criticism that inevitably, in the course of a career, will be forthcoming. These criticisms are more in the nature of opinions on performance rather than statements of fact. Freedom of speech certainly encompasses the right of the press and others to express their opinions on any matter or event. As noted in *Naked City, Inc. v. Chicago Sun-Times*, 77 Ill.App.3d 188, 395 N.E.2d 1042 (1st Dist. 1979), "While false statements of fact receive no constitutional protection, the expression of an opinion can never be false so as to constitute a false statement of fact." *Id.* at ____, 395 N.E.2d at 1043 (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)).

When these articles are considered in light of the innocent construction rule, it is even clearer that they cannot be construed as libel *per se*. The innocent construction rule, as modified by the Illinois Supreme Court,[1]

[1] As originally adopted, the innocent construction rule provided that if an allegedly libelous statement could be read to be innocent, it must be so read and declared nonactionable as a matter of law. *John v. Tribune Co.*, 24 Ill.2d 437, ____, 181 N.E.2d 105, 108, *cert. denied*, 371 U.S. 877 (1962). In the application of this rule, courts strained to give statements innocent constructions when defamatory constructions were more probable. *Chapski*, 92 Ill.2d at ____, 442 N.E.2d at 198.

(Footnote continued on following page)

requires that "a written or oral statement is to be considered in context, with the *words* and the *implications* therefrom given their natural and obvious meaning; if, as so construed, the statement may reasonably be innocently interpreted . . . it cannot be actionable *per se*." *Chapski*, 92 Ill.2d at ____, 442 N.E.2d at 199 (emphasis added). There is pre-*Chapski* caselaw to support the proposition that when allegedly libelous statements can be construed as a criticism of an individual in a particular instance or occasion, they will be given an innocent construction. *Britton v. Winfield Pub. Library*, 101 Ill.App.3d 546, ____, 428 N.E.2d 650, 652, 653 (2d Dist. 1981); *Wade v. Sterling Gazette Co.*, 56 Ill.App.2d 101, ____, 205 N.E.2d 44, 48 (3d Dist. 1965); *see Costello*, 111 Ill.App.3d at ____, 445 N.E.2d at 16-17 (acknowledging the distinction between general attacks on a party's character and mere criticism of conduct in a particular instance); *McGuire v. Jankiewicz*, 8 Ill.App.3d 319, ____, 290 N.E.2d 675, 676 (1st Dist. 1972) (words "you could not have chosen a worse attorney" were actionable because they imputed to plaintiff a lack of capacity as an attorney and as such prejudiced plaintiff by disparaging his professional reputation). *See also Delis v. Sepsis*, 9 Ill.App.3d 217, ____, 292 N.E.2d 138, 141-42 (1st Dist. 1972). There is some question as to the continuing validity of applying the innocent construction rule when a distinction can be made between a criticism of a party in a particular instance and a general attack on a party's character.[2] However, assuming that application of the rule

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[1] *continued*

Because of the inequities, inconsistencies, and confusion which the original rule caused, and because of the broader protections which exist to protect first amendment interests, together with the availability of various privileges, the Supreme Court of Illinois modified the rule in *Chapski*. *Id.* at ____, 442 N.E.2d at 198-99.

[2] It appears that, since the *Chapski* decision, only two courts have considered whether criticism of a party in a particular instance evokes the protection of the innocent construction rule.

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still is valid where such a distinction can be made, it is clear that the statements in question here criticize the plaintiff's performance on only one occasion. They say nothing about the plaintiff's character in general.

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[2] *continued*

Both decisions cast doubt over whether the rule may be applied when the particular instance/general attack distinction can be made.

In *Erickson v. Aetna Life & Casualty Co.*, 127 Ill.App.3d 753, 469 N.E.2d 679 (2d Dist. 1984), a chiropractor's bill which was supposed to be reviewed by a committee of chiropractors, was evaluated by a claims trainee who had no experience evaluating chiropractors' claims. On an evaluation form, the trainee noted that the plaintiff's treatment and its duration were unreasonable and unnecessary. *Id.* at ____, 469 N.E.2d at 681-82. This form served as the basis for denying payment of the plaintiff's bill. The defendant argued that, because the evaluation was of a particular course of treatment, the innocent construction rule should apply. The court rejected this argument and held that, because it was made on a report which purported to be a review by the plaintiff's peers in the chiropractic profession, the statement created an "aura of incompetence" and carried such great weight that it was libelous *per se*. *Id.* at ____, 469 N.E.2d at 685. The court went on to note that while "one accusation or mistake may not be actionable . . . a false statement which imputes a lack of ability in one's profession, or an unfitness to perform one's employment, is actionable as defamation." *Id.* at ____, 469 N.E.2d at 685-86.

In *Costello v. Capital Cities Media, Inc.*, 111 Ill.App.3d 1009, 445 N.E.2d 13 (5th Dist. 1982), the court recognized the particular instance/general attack distinction, but held that it did not apply in that case because the words at issue were an "actionable assault upon the plaintiff's character in general." *Id.* at ____, 445 N.E.2d at 16-17. However, the *Costello* court also questioned whether invoking the innocent construction rule when the distinction existed was valid in light of the decision in *Chapski*. *Id.* at ____, 445 N.E.2d at 17. Until the Illinois Supreme Court or more Illinois Appellate Courts address the question, we will assume that the innocent construction rule may be applied when a statement can be read reasonably as a criticism of a plaintiff's

(Footnote continued on following page)

The plaintiff urges us to read the articles as implying that the plaintiff could not deliver any oral argument, handle any large case, or bring integrity to any legal task. We simply cannot read these implications into the articles. The articles admittedly are uncomplimentary and, as is often the case where a layperson criticizes a specialist's performance in his or her area of expertise, show little awareness of the realities of oral argument before an appellate court and the factors which influence or impress a panel of judges. However, the articles amount to no more than the opinions of two individuals who thought that the plaintiff was uncooperative in preparing an appeal and performed poorly during oral argument. As such, the statements are not actionable as libel *per se*. *Matchett*, 125 Ill.App.3d at ____, 467 N.E.2d at 276; *Galvin v. Gallagher*, 81 Ill.App.3d 927, ____, 401 N.E.2d 1243, 1245 (1st Dist. 1980); *Naked City*, 77 Ill.App.3d at ____, 395 N.E.2d at 1043; *Sloan*, 66 Ill.App.3d at ____, 383 N.E.2d at 260; *Byers v. Kolodiziej*, 48 Ill.App.3d 1015, ____, 363 N.E.2d 628, 630 (4th Dist. 1977) (quoting *Parmelee v. Hearst Publishing Co.*, 341 Ill.App. 339, 347-48, 93 N.E.2d 512, 515 (1st Dist. 1950)). *See also Chapski*, 92 Ill.2d at ____, 442 N.E.2d at 199 (noting that when it is reasonable to characterize statements as constitutional expressions of opinions, the innocent construction rule may be applied); *Renard v. Columbia Broadcasting Sys., Inc.*, 126 Ill.App.3d 563, ____, 467 N.E.2d 1090, 1093 (1st Dist. 1984), *cert. denied*, 53 U.S.L.W. 3822 (1985).

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[2] *continued*

performance on a particular occasion or in a particular instance. However, because our decision rests only alternatively, and not solely, on the particular instance/general attack distinction, the plaintiff will not have been prejudiced by our decision if the Illinois courts decide to abolish the distinction.

When all is said and done, it strikes us that the distinction simply is another way of determining that the statements in issue are not so injurious as to be libelous *per se*. We have reached that conclusion with regard to the words in this case independently of our consideration of the innocent construction rule.

In sum, we hold that the statements at issue here are expressions of opinions which are not "so obviously and naturally harmful that proof of special damages is unnecessary." *Fried*, 99 Ill.2d at ____, 457 N.E.2d at 394. That is, they are not libelous *per se*. We reach the same conclusion about the "misstatement of fact" regarding the amount of time the plaintiff used during oral argument. We do not believe that these statements impugned the plaintiff's integrity, imputed to him an inability to perform the responsibilities of an attorney, or prejudiced him in the legal profession. Thus, the district court properly granted the defendants' motion to dismiss. Accordingly, the district court's judgment is affirmed.

A true Copy:
Teste:

.....
Clerk of the United States Court of Appeals for the Seventh Circuit

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JUDGMENT — ORAL ARGUMENT

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

July 30, 1985

Before

Hon. Jesse E. Eschbach, Circuit Judge

Hon. Joel M. Flaum, Circuit Judge

Hon. Floyd R. Gibson, Senior Circuit Judge*

VICTOR D. QUILICI,	) Appeal from the United
	) States District Court
Plaintiff-Appellant,	) for the Northern Dis-
	) trict of Illinois,
No. 84-2255 vs	) Eastern Division.
	)
SECOND AMENDMENT	) No. 83-C-1751
FOUNDATION, d/b/a	) James B. Moran, Judge.
THE WEEKLY BULLET,	)
et al.,	)
	)
Defendants-Appellees.	)

This cause was heard on the record from the United States District Court for the Northern

District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this Court filed this date.

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* The Honorable Floyd R. Gibson, Senior Circuit Judge, United States Court of Appeals for the Eighth Circuit, is sitting by designation.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VICTOR D. QUILICI,	)	
	)	
Plaintiff,	)	
	)	
vs	)	No. 83 C 1751
	)	
SECOND AMENDMENT FOUNDATION, d/b/a THE WEEKLY BULLET, ALAN M. GOTTLIEB, GREGORY R. McDONALD, JOHN D. LEWIS, JR., individually and as agents of THE SECOND AMENDMENT FOUNDATION,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Plaintiff, Victor D. Quilici, a citizen of Illinois, brought this libel action against the Second Amendment Foundation and certain indivi-

dual defendants, all citizens of Washington State, under the court's diversity jurisdiction. *See* 28 U.S.C., § 1332. Plaintiff seeks $15,000,000 in compensatory and punitive relief in each of two counts, satisfying the amount in question requirement. Pursuant to Illinois choice of law rules binding upon this court in this diversity case, *see Klaxon Co. v. Stentor Electric Manufacturing Co.*, 313 U.S. 487, 496 (1941), the law of the state where the injury occurred will govern this action unless another state has a "more significant relationship" to the occurrence or parties involved. *See Pittway Corp. v. Lockheed Aircraft Corp.*, 641 F.2d 524, 526 (7th Cir. 1981); *Ingersoll v. Klein*, 46 Ill.2d 42, 262 N.E.2d 593 (1970). While the State of Washington is the domicile of the defendants, the court

finds that Illinois, where plaintiff resides, where the acts described in the allegedly libelous article occurred, where plaintiff's reputation is established, and where that reputation was allegedly injured by the article, has the most significant contacts with this litigation. *See generally Pittway Corp., supra*, at 526-29; *Snead v. Forbes, Inc.*, 2 Ill.App.3d 22, 26-7, 275 N.E.2d 746 (1st Dist. 1971). Accordingly, the court will apply Illinois law to this action.

Plaintiff was one of three attorneys making oral arguments before the Seventh Circuit in an appeal of a controversial district court decision upholding the constitutionality of a handgun ban passed by the Village of Morton Grove. Defendant Second Amendment Foundation (SAF) publishes a newsletter, The Weekly Bullet, the

stated purpose of which is to be "The Authority for Those Who Need to Know the People, the Organizations, and the Tactics in the Battle to Keep and Bear Arms." In its June 7, 1982 issue, The Weekly Bullet commented on the oral argument before the Court of Appeals.

MORTON GROVE APPEAL HEARD IN CHICAGO

On Friday, May 28, a three-judge panel of the U.S. Court of Appeals: Seventh Circuit, heard the oral arguments of the pro-gun appeal to Judge Decker's onerous decision which upheld the Morton Grove handgun ban. Decker's decision had been handed down last December. Pro-gun attorney, Victor Quilici, the Second Amendment Foundation and the National Rifle Association all filed appeals to overturn it in March.

The oral arguments were heard Friday morning in Chicago at the Federal Building. Second Amendment Foundation attorney Don B. Kates, Jr., noted criminologist and pro-gun scholar, and NRA attorney Don Moran of the Chicago law firm Peterson and Houpt, made presentations to the judges on behalf of the individual plaintiffs supported by their respective organizations. Quilici represented himself.

A team of attorneys from the law firm of Jenner & Block defended the Morton Grove ordinance. Jenner & Block is donating much of their time to defend the Morton Grove law and some legal costs are being underwritten by the National Coalition to Ban Handguns.

Unfortunately, the presentation by the pro-gun side was beset with problems, leading one observer to remark that the appeal may be seriously jeopardized by the manner in which the oral arguments were made.

Greg McDonald, SAF executive director, attended the hearings in Chicago and agreed with the assessment. McDonald said, "I was pleased by the way in which our attorneys and the NRA attorneys cooperated. But quite frankly, I felt that the presentation made by Victor Quilici was poor. It may have sunk our appeal."

Because three cases were filed challenging the Morton Grove ordinance by three separate parties, the federal court consolidated the cases into one. This had meant that three groups of attorneys have had to work together in the preparation of briefs and oral presentations. So far, this working relationship has fared well, despite some strains.

However, apparently Quilici was very uncooperative during preparation of the oral presentations for the appeal. The pro-gun

side was given thirty minutes by the Court to present the appeal. The NRA and SAF attorneys had worked to divide the responsibilities for presentation of the arguments. Quilici was supposed to have gone first, presenting several arguments relating to the Illinois Constitution and using no more than 6 minutes. The NRA was to follow, presenting additional Illinois constitutional arguments and then present arguments to the Court asking it to abstain until the Illinois State Supreme Court issued a ruling. The NRA was to have taken about 5 minutes.

Finally, SAF attorney Don Kates was to present a 4 to 5 minute argument explaining that the Second Amendment to the U.S. Constitution prohibited Morton Grove-type gun bans.

Unfortunately, Victor Quilici took 13 minutes to make his presentation, using up nearly half the total time allocated to the pro-gun side. Even worse, his presentation was rambling and often pointless. The ultimate outcome was that the pro-gun side ran out of time in the middle of the Second Amendment presentation. Moreover, all time reserved for rebuttal to the Morton Grove response had been used up by Quilici. Despite that, the Court permitted NRA attorney Moran to make a one minute rebuttal to the anti-gun Morton Grove presentation.

> The outcome may be known within a few weeks. But the disasterous problems caused by Quilici may have severely damaged chances for a favorable ruling.

In its June 21, 1982 issue, The Weekly Bullet issued an article entitled, "In Defense of Mr. Quilici".

> It was mentioned in TWB (V7, R19) that pro-gun attorney Victor Quilici used more than the allotted time for presentation of his case during the recent Morton Grove appeals hearing in Chicago. TWB wishes to point out that Quilici was faced with a panel of judges continually interrupting his oral arguments with questions, and that in answering these, Quilici exceeded his time limit. In addition, constant interruptions during an oral presentation make it extremely difficult to maintain a cohesive and organized delivery, especially on such a complex subject.
>
> In no way should the earlier comments in TWB be considered as reflecting on Mr. Quilici's competence in the legal or any other field. SAF feels confident with Mr. Quilici and has contributed substantial financial support to him.
>
> SAF is well aware of all the hard work and long hours Quilici has devoted to the Morton

> Grove case. Every gun owner in America owes him a debt of gratitude for his vigilance and determination in filing the first lawsuit against the infamous Morton Grove ban.

In Count I of his amended complaint plaintiff contends the June 7, 1982 article contained false, malicious and defamatory libels concerning him. In Count II plaintiff contends the June 21, 1982 article also contained false, malicious and defamatory libels. In both counts plaintiff asks for $5,000,000 in general and $10,000,000 in punitive relief.

Plaintiff alleges only general damages, making no particularized allegations of special damages as required in Illinois in an action in libel *per quod*. *See Richardson v. Dunbar*, 95 Ill.App.3d 254, 259-60, 50 Ill.Dec. 756, 761,

419 N.E.2d 1205, 1210 (3d Dist. 1981); *Bruck* v. *Cincotta*, 56 Ill.App.3d 260, 264, 13 Ill.Dec. 782, 787-88, 371 N.E.2d 874, 879-80 (1st Dist. 1977). His action, therefore, must be construed as an action in libel *per se*. A writing is considered libelous *per se* if it imputes to a plaintiff (1) the commission of a crime; (2) infliction of a loathesome disease; (3) the unfitness to perform or lack of integrity in performing the duties of employment; or (4) the lack of ability in the party's trade or profession. *See Costello* v. *Capital Cities Media, Inc.*, 111 Ill.App.3d 1009, 1014, 67 Ill.Dec. 721, 723, 445 N.E.2d 13, 15 (5th Dist. 1983); *Bruck* v. *Cincotta*, 56 Ill.App.3d at 264, 13 Ill.Dec. at 786, 371 N.E.2d at 878. Plaintiff apparently alleges the writings imputed the latter two categories.

To establish libel *per se* plaintiff must show that the writing contains a "serious charge of incapacity or misconduct in words so obviously hurtful that proof of their injurious character is dispensed with." *Costello v. Capital Cities Media, Inc.*, 111 Ill.App.3d at 9, 67 Ill.Dec. at 723, 445 N.E.2d at 15. When specifically referring to an attorney, "[o]ral or written words which impute to him a want of the requisite qualifications to practice law or which charge him with dishonest or improper practices in the performance of his duties as an attorney are actionable *per se*." *Colmar v. Greater Niles Township Publishing Corp.*, 13 Ill.App.2d 267, 270-71, 141 N.E.2d 652, 654 (1st Dist. 1957). Significantly, the court in *Colmar* was concerned with the attacks on an attorney's ability to

practice law in general, not with attacks on a specific instance of the attorney's conduct.

This dichotomy between attacks on a single instance of a person's performance as opposed to attacks on that person's general ability runs throughout Illinois libel law. In *Allen v. Ali*, 105 Ill.App.3d 887, 61 Ill.Dec. 678, 435 N.E.2d 167 (1st Dist. 1982), the court found that the describing of one conversation by plaintiff as "incoherent" in a complaint to the Chicago Bar Association was not libelous because the term did not refer to the attorney's logic or intellectual capabilities. *Id.* at 889-90, 61 Ill.Dec. at 680, 435 N.E.2d at 169. In *McGuire v. Jankiewicz*, 8 Ill.App.3d 319, 290 N.E.2d 675 (1972), however, the court found the statement "you could not have chosen a worse attorney" was indeed libelous because "the terms imputed a want of capacity in

the legal profession and as such prejudice plaintiff by disparaging his professional reputation." *Id.* at 320, 290 N.E.2d at 676.

This distinction has been clearly discussed in a number of cases. In *Britton v. Winfield Public Library*, 101 Ill.App.3d 546, 57 Ill.Dec. 100, 428 N.E.2d 650 (2d Dist. 1981), for example, defendants published a letter which attacked plaintiff's expression of doubts concerning a library project. The court found the letter non-actionable, stating: Although harsh and uncomplimentary, these words amount to criticism of the plaintiff's conduct in a particular instance and not a personal attack on plaintiff's honesty or character in general. *Id.* at 549, 57 Ill.Dec. at 102, 428 N.E.2d at 652. *See Wade v. Sterling Gazette*, 56 Ill.App.2d 101, 205 N.E.2d 44 (1965); *Delis v. Sepsis*, 9 Ill.App.3d 217, 292

N.E.2d 138 (1972). *See also Costello* v. *Capital Cities Media, Inc.*, 111 Ill.App.3d at 1114, 67 Ill.Dec. at 725, 445 N.E.2d at 17 (5th Dist. 1982) (acknowledging distinction discussed in *Britton*, *Wade* and *Delis*, but caracterizing attack as an "actionable assault on plaintiff's character in general, not mere criticism of his conduct in a particular instance").

In the present case, the comments concerning plaintiff discussed his performance in a specific case. The first article stated that plaintiff was uncooperative in the preparation of the argument, and describes his presentation as poor, rambling and often pointless. These comments specifically refer to plaintiff's performance in preparing and delivering the Morton Grove argument. Plaintiff admits this in his memorandum but cites *Jankiewicz* for the proposition that an

attack can be limited to only an instance of one's conduct and yet amount to a general attack when read in context. *See* plaintif's mem. at 11. As stated previously, however, the attack in *Jankiewicz* was clearly general, stating that no attorney worse than plaintiff could be found. The complained-of statement here, on the other hand, refers precisely to the type of specific conduct which is not considered libelous *per se*. The second article is even further evidence of this. That article, in attempting to clarify the first, states that the earlier article should not "be considered as reflecting on Mr. Quilici's competence in the legal or any other field." While the possibly libelous nature of the first article is not affected by the second article in any way other than in the damage amount that might be awarded, *see Storey v. Wallace*, 60 Ill.

51, 56 (1871), the second article even more clearly is not a general attack. The court concludes that both articles do not have the requisite generalized attack for a finding of libel *per se*.

Accordingly, defendants' motion for summary judgment is granted.

/s/ James B. Moran
Judge, United States
District Court

June 28, 1984.

APPENDIX C

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

September 9, 1985.

Before

Hon. Jesse E. Eschbach, Circuit Judge

Hon. Joel M. Flaum, Circuit Judge

Hon. Floyd R. Gibson, Senior Circuit Judge*

VICTOR D. QUILICI,	) Appeal from the United
	) States District Court
Plaintiff-Appellant,	) for the Northern Dis-
	) trict of Illinois,
No. 84-2255 vs	) Eastern Division.
	)
SECOND AMENDMENT	) No. 83-C-1751
FOUNDATION, d/b/a	) James B. Moran, Judge.
THE WEEKLY BULLET,	)
et al.,	)
	)
Defendants-Appellees.	)

ORDER

On consideration of the petition for rehearing filed in the above-entitled cause by plaintiff-appellant, all of the judges on the panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

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* The Honorable Floyd R. Gibson, Senior Circuit Judge, United States Court of Appeals for the Eighth Circuit, is sitting by designation.